

mine operator in any program to insure the payment of benefits for total disability or death due to pneumoconiosis: *Provided*, That there is in effect in such State an alternative system to guarantee that all benefits including medical benefits shall be paid.

**§ 722.128 Responsible coal mine operators.**

Sections 421 and 422 of part C of title IV as well as the legislative history of the Act, indicate that Congress intended the coal mine operators in the several States to bear as fully as possible the liability for the payment of pneumoconiosis benefits. In accordance with this intent Congress in section 421(b)(2)(E) of the Act has required that no State workmen's compensation law shall be included on the Secretary's list, unless such law provides that a coal mine operator who acquired his or its mine or substantially all of the assets thereof from a person (hereinafter referred to in this section as a "prior operator") who was an operator of such mine on or after December 30, 1969, shall be liable for and shall secure the payment of all benefits which would have been payable by the prior operator with respect to miners previously employed in such mine if the acquisition had not occurred and the prior operator had continued to operate such mine, and further that such prior operator shall not be relieved of his or its liability for the payment of pneumoconiosis benefits in the event that his successor to such mine is for any reason unable to discharge his liability (see section 422(i) of the Act).

**§ 722.129 Insurance, self insurance.**

(a) A State workmen's compensation law may, in appropriate circumstances, be excluded from the Secretary's list if such law permits coal mine operators or employers to obtain commercial contracts of insurance to guarantee the payment of pneumoconiosis benefits and such State law does not require (1) that such commercial insurer be authorized under the laws of the State to insure workmen's compensation, and (2) that each such commercial contract of insurance contain a provision that insolvency or bankruptcy of the in-

sured or discharge therein (or both) shall not relieve the insurance carrier from liability for all current and future payments of benefits due an entitled individual.

(b) A State workmen's compensation law may, in the discretion of the Secretary, be excluded from the Secretary's list if it is apparent that self-insurance arrangements permitted under such State law in general are not sufficient to insure the uninterrupted payment of benefits to an entitled individual.

(c) Contribution or apportionment of liability among insurers and/or self-insurers, if so provided for by a State workmen's compensation law, shall not be a basis for exclusion of such law from the Secretary's list.

(d) This section shall not be construed to require that a State workmen's compensation law guarantee the payment of pneumoconiosis benefits by means of commercial insurance or self-insurance programs.

**§ 722.130 State protections of benefits.**

No State workmen's compensation law shall be included on the Secretary's list, unless such State law establishes and provides a means of obtaining revenues to insure that pneumoconiosis benefits shall be paid to entitled individuals for whom no other source of benefits is available.

**§ 722.131 Contributions by miners.**

No State workmen's compensation law shall be included on the Secretary's list if such law permits or requires miners to provide funds for the payment of insurance premiums, the support for a self-insurance fund, or the support for any State fund established for the purpose of insuring the payment of pneumoconiosis benefits.

**§ 722.132 Waiver of right to benefits.**

No State workmen's compensation law shall be included on the Secretary's list if such law permits a miner or other prospective claimant to by any means waive, in whole or in part, such individual's rights to receive full benefits for total disability or death due to pneumoconiosis. However, under appropriate circumstances, a waiver may be permitted in respect of the liability of

any individual coal mine operator or employer if such State workmen's compensation law contains a provision or provisions which otherwise insure that benefits shall be available to be paid to such claimant from some other approved source.

**§ 722.133 Retroactive coverage required.**

No State workmen's compensation law shall be included on the Secretary's list if such law prohibits the filing of or does not provide for benefits in respect of an otherwise timely (see § 722.116) and valid claim solely on the grounds that the miner on whose total disability or death the claim is predicated was not employed in a coal mine in such State on the effective date of such State's law.

**§ 722.134 Residency requirements.**

No State workmen's compensation law shall be included on the Secretary's list if such law requires that the claimant be domiciled in or a resident of such State at the time the claim is filed. This section shall not be construed to prohibit a State from refusing to process a claim for benefits in any case in which the miner on whose total disability or death a claim is predicated, was not exposed for a reasonable period of time in such State.

CRITERIA: AMOUNT OF BENEFITS:  
MEDICAL BENEFITS

**§ 722.135 Amount of benefits, computation.**

(a) Section 412(a) of the Act sets forth the amount of benefits for total disability or death due to pneumoconiosis to which an individual shall be entitled, the extent of such entitlement and persons so entitled. No State workmen's compensation law shall be included on the Secretary's list if it does not, in every case, provide benefit amounts which are substantially equivalent to or greater than those amounts to which an eligible individual would be entitled under section 412(a).

(b) No State workmen's compensation law which arbitrarily limits the total amount of benefits to which an eligible individual may be entitled over

such individual's lifetime shall be included on the Secretary's list.

(c) No State workmen's compensation law which subsequent to the effective date of this part 722 is amended to reduce the amount of benefits to which an eligible individual is entitled for total disability or death due to pneumoconiosis shall be included on the Secretary's list.

**§ 722.136 Augmented benefits.**

As set forth in section 412(a) of the Act the amount of benefits to which a beneficiary is entitled may be augmented by up to 100 percent based upon the number of persons (wife, children, parents, brothers, sisters) dependent upon such beneficiary for support. No State workmen's compensation law shall be excluded from the Secretary's list because it does not contain similar augmentation provisions if such law otherwise insures that beneficiaries and their dependents shall receive benefits substantially equivalent to or greater than the amounts such persons would receive under section 412(a) of the Act.

**§ 722.137 Minimum benefit amounts.**

No State workmen's compensation law shall be included on the Secretary's list if it does not guarantee that the minimum amount of benefits payable to any beneficiary or dependent shall be substantially equivalent to or greater than the amount to which such beneficiary or dependent would be entitled if the claim were paid under section 412(a) of the Act, notwithstanding any provision contained in the State workmen's compensation law which requires the computation of benefit amounts based upon the miner's average weekly or monthly wage.

**§ 722.138 Offsets for Federal benefits prohibited.**

No State's workmen's compensation law shall be included on the Secretary's list if such law requires that pneumoconiosis benefits payable to any individual shall be offset by any amount to which such individual is or may be entitled on account of total disability or death due to pneumoconiosis under any law of the United States.